

The error for which a venire de novo is awarded at this term in State vs Andrews, that is, without stating distinctly how he decided the facts preliminary to the admissibility of the acts and declarations of Ann Melton in furtherance of a common purpose to murder the deceased, upon the evidence offered to the Court to establish these preliminary facts. He allows the evidence to go to the jury, and instructs the jury that if they are not satisfied of the existence of a conspiracy between the prisoner & Ann Melton to effect the murder of the deceased, in that case the jury are to give to the acts & declarations of Ann Melton, which had been admitted as evidence to the jury, no weight & are not to be influenced by them. What facts amount to such an agreement between the prisoner and Ann Melton to aid & assist each other in effecting the murder of the deceased, as to make her acts & declarations in furtherance of the common purpose evidence against him, is a question of law & the decision in the Court below may be reversed in this Court. So what evidence the Judge should allow to be offered to him to establish these facts is a question of law. So, whether there be any evidence tending to show the existence of such an agreement is a question of law. But whether the evidence, if true, proves these facts & whether the witnesses giving testimony to the Court touching the facts are entitled to credit or not, and in case of a conflict of testimony which witness should be believed by the Court, are questions of fact.